



Law Enforcement

July 2001

Digest

HONOR ROLL

527th Session, Basic Law Enforcement Academy – January 3rd, 2001 through May 10th, 2001

President: Danny R. Welch - Gig Harbor Police Department
Best Overall: David W. Quiggle - Washington State Liquor Control Board
Best Academic: Gary L. Manning - Bingen-White Salmon Police Department
Best Firearms: Danny R. Welch - Gig Harbor Police Department
Tac Officer: Officer Henry Gill - Tacoma Police Department

528th Session, Basic Law Enforcement Academy, Spokane – January 8th through May 11th, 2001

Highest Scholarship: John E. Wallace - Grant County Sheriff's Office
Highest Night Mock Scenes: Josh R. Bunten - Franklin County Sheriff's Office
Outstanding Officer: Kevin D. Bayne - Walla Walla Police Department
Highest Pistol Marksmanship: Erik V. Spaulding - Asotin County Sheriff's Office
Best Overall Firearms: Michael R. McNees - Spokane County Sheriff's Office
Best Tactical Firearms: Cameron G. Clasen - Central WA University Police Department

JULY LED TABLE OF CONTENTS

2001 LEGISLATIVE UPDATE -- PART ONE	1
2000 ACT TAKES EFFECT: INTERMEDIATE DRIVER LICENSE FOR UNDER-18 DRIVERS	16
UNITED STATES SUPREME COURT	
FOURTH AMENDMENT PERMITS CUSTODIAL ARREST FOR ALL MISDEMEANORS, EVEN IF PUNISHABLE ONLY BY A FINE; WASHINGTON LAW IS PROBABLY MORE RESTRICTIVE	
<u>Atwater v. City of Lago Vista</u> , 121 S.Ct. 1536 (2001)	18
NEXT MONTH	22

2001 LEGISLATIVE UPDATE -- PART ONE

LED Introductory Notes: This is Part One of what we expect to be either a two-part or a three-part update of 2001 Washington legislative enactments of special interest to law enforcement. We have tried to include in Part One most of the significant enactments which take effect on or before July 22, 2001 (note that unless a different effective date is specified in the legislation, enactments adopted during the regular session take effect on July 22, 2001, i.e., 90 days after the end of the regular session).

Thank you to Tom McBride and Pam Loginsky of the Washington Association of Prosecuting Attorneys for providing us with helpful information.

Consistent with our past practice, our update will for the most part not digest legislation in the subject areas of sentencing, consumer protection, retirement, collective bargaining, civil service, tax, budget, and worker benefits. Part Two next month will include a cumulative index of enactments covered in the first two parts, as well as legislation not covered in Part One. If there is a Part Three, it would cover any legislation not covered in Parts One and Two, and/or revisit select enactments previously digested. Part Two or Part Three would cover any legislation adopted in the second special session of the Washington Legislature to be held in June. The text of the 2001 legislation is available on the Internet, chapter by chapter, at [http://www.leg.wa.gov/pub/billinfo/2001-02/chapter_to_bill_table.htm]

We have tried to incorporate RCW references in our entries, but where new sections or chapters are created by the legislation, the State Code Reviser must assign the appropriate code numbers. Codification will likely not be completed until early fall of this year.

The editors of the LED remind our readers that any legal interpretations that we express in the LED are the views of the editors and do not necessarily reflect the views of the Attorney General's Office or of the Criminal Justice Training Commission.

OUT-OF-STATE SEX OFFENSE CONVICTIONS UNDER "PERSISTENT OFFENDER" DEFINITION

CHAPTER 7 (ESSB 5013)

Effective Date: July 22, 2001

Amends RCW 9.94A.030(31)(6)(ii) to clarify that out-of-state and federal convictions for comparable sex offenses shall be used to determine whether an offender meets the definition of "persistent offender" under Washington's "Two Strikes" law for sentencing sex offenders.

DOC EMPLOYEES DETAINING, SEARCHING PERSONS WHO ENTER DOC PREMISES

CHAPTER 11 (SB 5047)

Effective Date: April 13, 2001

Adds a new section to chapter 72.09 RCW authorizing some DOC employees to detain, search or remove persons: a) who enter or remain without permission within correctional facility or institutional grounds; or b) whenever, on probable cause, it appears a person has committed or is attempting to commit a crime or to possess contraband within a correctional facility or institutional grounds.

CIVIL LIABILITY FOR FAXING STD INFO TO WRONG NUMBER

CHAPTER 16 (ESB 5258)

Effective Date: July 22, 2001

Amends RCW 70.24.084 to allow for recovery of at least \$1000 and attorney fees where a person causes unauthorized communication of confidential sexually transmitted disease information by facsimile transmission or otherwise communicates the information to an unauthorized recipient when the sender had reason to know the facsimile transmission phone number or other transmittal information was incorrect or outdated.

ADDRESS CONFIDENTIALITY THROUGH SECRETARY OF STATE FOR STALKING VICTIMS

CHAPTER 28 (HB 1546)

Effective Date: July 22, 2001

Amends several sections in chapter 40.24 RCW to allow stalking victims, like DV and sexual assault victims, to enter the address confidentiality program administered by the Secretary of State. See the April 2000 LED at pages 2-3 for an article describing this program.

DIGITAL SIGNATURE CRIME

CHAPTER 39 (SHB 1632)

Effective Date: July 22, 2001

Adds a new section to chapter 9.38 RCW relating to criminal use of digital signatures and digital certificates, as those terms are defined in RCW 19.34.020. The new section in 9.38 reads as follows:

- 1) A person shall not knowingly misrepresent the person's identity or authorization to obtain a public key certificate used to reference a private key for creating a digital signature.
- 2) A person shall not knowingly forge a digital signature as defined in RCW 19.34.929(16).
- 3) A person shall not knowingly present a public key certificate for which the person is not the owner of the corresponding private key in order to obtain unauthorized access to information or engage in an unauthorized transaction.
- 4) The definitions in RCW 19.34.929 apply to this section.
- 5) A person who violates this section is guilty of a class C felony punishable under chapter 9A.20 RCW.

LIMITATIONS ON SEALING JUVENILE OFFENDER RECORDS

CHAPTER 49 (SB 5691)

Effective Date: July 22, 2001

Amends RCW 13.50.050 to place limits on sealing of juvenile offender records.

PROTECTING CHILDREN FOUND AT METHAMPHETAMINE INVESTIGATION SITES

CHAPTER 52 (ESSB 5995)

Effective Date: July 22, 2001

Among other thing, adds a new section to chapter 26.44.RCW requiring that law enforcement officers report to DSHS when children are found at the site of methamphetamine-related investigations. The new section reads as follows:

A law enforcement agency in the course of investigating: 1) An allegation under RCW 69.59.401(a) relating to manufacture of methamphetamine; or 2) an allegation under RCW 69.50.440 relating to possession of ephedrine or pseudoephedrine with intent to manufacture methamphetamine, that discovers a child present at the site, shall contact the department immediately.

IGNITION INTERLOCK DEVICES -- DRIVING RECORDS

CHAPTER 55 (HB 1419)

Effective Date: July 22, 2001

Amends RCW 46.20.740 to change the requirement of DOL notation of a driver's ignition interlock device restriction. The notation shall be placed on the driver's record, not the driver's license. Violation of RCW 46.20.740 remains a misdemeanor.

UNIFORM CHILD CUSTODY AND JURISDICTION ACT

CHAPTER 65 (SB 5348)

Effective Date: July 22, 2001

Rewrites chapter 26.27 RCW to adopt the "Uniform Child Custody And Jurisdiction Act." Section 311 of the act adds a new section to chapter 26.27 providing that "[a]n order directing law enforcement to obtain physical custody of the child from the other parent or a third party holding the child may only be sought pursuant to a writ of habeas corpus under chapter 7.36 RCW."

INVESTIGATING SUDDEN UNEXPLAINED DEATHS OF CHILDREN UNDER AGE THREE

CHAPTER 82 (HB 1216)

Effective Date: July 22, 2001

Amends RCW 43.103.100 (Relating to duties of Washington State Forensic Investigations Council) to provide:

3) Basic training for death investigators offered by the Washington association of coroners and medical examiners and the criminal justice training commission shall include a module which specifically addresses the investigations of the sudden unexplained deaths of children under the age of three. The training module shall include a scene investigation protocol endorsed or developed by the council. A similar training curriculum shall be required for city and county law enforcement officers and emergency medical personnel certified by the department of health as part of their basic training through the criminal justice training commission or the department of health emergency medical training certification program.

4) Each county shall use a protocol that has been endorsed or developed by the council for scene investigations of the sudden unexplained deaths of children under the age of three. The council may utilize guidelines from the center for disease control and other appropriate resources.

5) The council shall develop a protocol for autopsies of children under the age of three whose deaths are sudden and unexplained. This protocol shall be used by pathologists who are not certified by the American board of pathology in forensic pathology, and who are providing autopsy services to coroners and medical examiners.

Amends RCW 43.50.104(2) to provide for reimbursement to counties for SID investigations in circumstances where proper protocols are followed:

c) When the county bears the cost of an autopsy of a child under the age of three whose death was sudden and unexplained, the county shall be reimbursed for the expenses of the autopsy when the death scene investigation and the autopsy have been conducted under RCW 43.103.100(4) and (5), and the autopsy has been done at a facility designed for the performance of autopsies.

BREASTFEEDING IN PUBLIC

CHAPTER 88 (SSHB 1590)

Effective Date: July 22, 2001

Clarifies that breastfeeding in public is lawful; includes an amendment to RCW 9A.88.010 providing that "[t]he act of breastfeeding or expressing breast milk is not indecent exposure."

TOLLING OF PROBATION PERIOD

CHAPTER 94 (ESSB 5970)

Effective Date: July 22, 2001

Amends several sections in Title 3 RCW to provide that a person who fails to appear for a hearing on the terms of probation shall have the period of probation tolled until he or she makes his or her presence known to the court.

HARMONIZING DEFINITIONS OF SEX AND KIDNAPPING OFFENDERS UNDER CRIMINAL SENTENCING AND OFFENDER REGISTRATION STATUTES

CHAPTER 95 (SSB 5014)

Effective Date: July 1, 2001

Amends definitions of "sex offense" and "kidnapping offense" in RCW 9A.44.130 to clarify who must register. Also amends the definition of "sex offense" in the sentencing statute at RCW 9.94A.030 to include "[a] felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.070 or 9.68A.080."

METHAMPHETAMINE -- PRECURSOR DRUG SALES LIMITS

CHAPTER 96 (ESSB 5017)

Effective Date: July 22, 2001

Adds a number of new crimes to chapter 69.43 RCW and amends other provisions to assist law enforcement in combating the increase in the illegal manufacture of methamphetamine.

Amends RCW 69.43.010 to add wholesalers to the class of individuals who must report to the State Board of Pharmacy sales, transfers, etc. of certain substances. Failure to comply with the reporting requirements is a gross misdemeanor. Extends the "proper identification" provision to other than face-to-face purchases. Makes a failure to comply with the "proper identification" requirements of RCW 69.43.010 a misdemeanor.

A new section in RCW 69.43 requires any manufacturer or wholesaler to report all suspicious transactions concerning the substances listed in RCW 69.43.010(1) to the State Board of Pharmacy. Suspicious transactions involve payment in cash or money orders in a total amount of more than \$200, and/or the factors identified in the federal Comprehensive Methamphetamine Control Act of 1996.

A new section in RCW 69.43 requires record-keeping of every sale or transfer by a wholesaler or manufacturer. The records, which must be maintained for 2 years, shall be available for inspection by the State Board of Pharmacy. Violation of the record-keeping provisions is a gross misdemeanor.

A new section in RCW 69.43 makes it a gross misdemeanor for a pharmacy licensed by, or shopkeeper or itinerant vendor registered with the Department of Health under chapter 18.64 RCW, or an employee thereof, to knowingly sell, transfer, or to otherwise furnish in a single transaction: a) more than three packages of one or more products that he or she knows to contain ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers; or b) a single package of any product that he or she knows to contain more than three grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers or salts of isomers, or a combination of any of these substances. This section also makes it a gross misdemeanor for a person who is not a manufacturer, wholesaler, pharmacy practitioner, shopkeeper, or itinerant vendor licensed by or registered with the Department of Health under chapter 18.64 RCW to purchase or acquire, in any 24 hour period: a) more than three packages of one or more products that he or she knows to contain ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers; or b) a single package of any product that he or she knows to contain more than three grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances.

A new section in chapter 69.43 RCW makes it a gross misdemeanor for anyone other than a pharmacist or other authorized vendor or practitioner to possess, other than in their home under

circumstances consistent with typical medical or household use, more than 15 grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances.

New authority is provided to the State Board of Pharmacy to impose a civil penalty for failure to comply with the Act. Allows a licensee or registrant to avoid civil penalties and to keep his or her license or registration if good faith efforts were made to comply with the law, including the training of employees.

Under a preemption clause, cities and counties may not adopt or enforce any ordinance pertaining to this chapter which prohibits conduct that is not prohibited under this chapter, or that defines violations or penalties in a manner that varies from this chapter. Counties and cities may, however, revoke, cancel, suspend, or otherwise limit a local business or professional license for conduct that violates any provision of this chapter.

PROTECTING DOG GUIDES AND SERVICE ANIMALS

CHAPTER 112 (ESSB 5943)

Effective Date: July 22, 2001

This act is known as "Layla's Law."

Adds a new section to chapter 9.91 RCW which makes it a misdemeanor for: 1) any person who has received notice that his or her behavior is interfering with the use of a dog guide or service animal and continues with reckless disregard to interfere with the use of a dog guide or service animal by obstructing, intimidating, or otherwise jeopardizing the safety of the dog guide or service animal user or his or her dog guide or service animal; or 2) any person who, with reckless disregard, allows his or her dog to interfere with the use of a dog guide or service animal by obstructing, intimidating, or otherwise jeopardizing the safety of the dog guide or service animal user or his or her dog guide or service animal. A second or subsequent violation of these provisions is a gross misdemeanor.

"Dog guide" is defined under this new section as "a dog that is trained for the purpose of guiding blind persons or a dog trained for the purpose of assisting hearing impaired persons." "Service animal" is defined as "an animal [**not limited to dogs – LED Ed.**] that is trained for the purposes of assisting or accommodating a disabled person's sensory, mental or physical disability."

This new section in chapter 9.91 also makes it a gross misdemeanor for: a) "[a]ny person who, with reckless disregard, injures, disables, or causes the death of a dog guide or service animal", or b) "[a]ny person who, with reckless disregard, allows his or her dog to injure, disable, or cause the death of a dog guide or service animal.

This new section also creates one new class C felony for any person who intentionally injures, disables, or causes the death of a dog guide or service animal, and also provides that "[a]ny person who wrongfully obtains or exerts unauthorized control over a dog guide or service animal with the intent to deprive the dog guide or service animal user of his or her dog guide or service animal is guilty of theft in the first degree, RCW 9A.56.030."

Restitution in these cases shall include training costs for the dog, vet bills, and lost income for the service animal user.

CRIME VICTIMS' BENEFITS -- HIT AND RUN MV ASSAULTS

CHAPTER 136 (HB 1040)

Effective Date: July 22, 2001

Amends RCW 7.68.020 to extend benefits under the Crime Victims' Compensation Act to victims of vehicular assault when the identity of the perpetrator cannot be determined because he or she left scene of the accident in violation of RCW 46.52.020.

JUNK VEHICLES AND GARBAGE -- REVISING ACT ADOPTED IN 2000

CHAPTER 139 (SHB 1163)

Effective Date: July 22, 2001

An act adopted in 2000 addressed dumping trash and abandoning junk vehicles. See May 2000 LED:05. This 2001 act amends RCW 70.93.060, 70.95.240, and 46.55.230 to delete the phrase "unincorporated area" and to eliminate the class 1 civil infraction for dumping trash and abandoning junk vehicles under certain circumstances.

VACATING CONVICTIONS FOR MISDEMEANOR AND GROSS MISDEMEANOR CONVICTIONS

CHAPTER 140 (SHB 1174)

Effective Date: July 22, 2001

Adds a new section to chapter 9.96 RCW to allow for vacation of convictions for misdemeanors and gross misdemeanors under certain specified circumstances.

When vacation of a conviction is granted, the clerk of the court must immediately transmit the order vacating the conviction to the Washington State Patrol identification section and to the local police agency, if any, which holds criminal history information for the person who is the subject of the conviction. The Washington State Patrol and any such local police agency shall immediately update their records to reflect the vacation of the conviction, and shall transmit a copy of the order vacating the conviction to the FBI. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except to other criminal justice enforcement agencies.

LED EDITORIAL NOTE: This new law apparently does not affect eligibility to possess a firearm under chapter 9.41 RCW.

HIT AND RUN -- STRIKING BODY OF DECEASED PERSON

CHAPTER 145 (SHB 1649)

Effective Date: July 22, 2001

Amends the hit-and-run provisions of RCW 46.52.020 to extend the prohibition of the statute to the circumstance where a driver strikes the body of an already-deceased person.

CRIME VICTIMS' COMPENSATION FOR VICTIMS OF SEX PREDATORS

CHAPTER 153 (SB 5270)

Effective Date: July 22, 2001

Amends RCW 7.68.020 to extend the right to file for benefits under the Crime Victims' Compensation Act to victims of sex predators under certain circumstances.

CERTIFYING AND DECERTIFYING PEACE OFFICERS

CHAPTER 167 (HB 1062)

Effective Date: January 1, 2002

Adds new sections to chapter 43.101 providing for certification and decertification of Washington peace officer under a program to be administered by the Criminal Justice Training Commission. Washington is one of the last states in the U.S. to adopt certification-decertification legislation. Washington's version of cert-decert is more limited in scope than the legislative programs in most other states.

All Washington peace officers shall timely obtain certification or exemption therefrom, and shall maintain certification. Certification may be denied or revoked by the CJTC, subject to due process and appeal rights provide under the act, based upon a finding of one or more of the following conditions:

- 1) The **peace officer** has failed to timely meet all requirements for obtaining a certificate of basic law enforcement training, a certificate of basic law enforcement training equivalency, or a certificate of exemption from the training;
- 2) The peace officer has knowingly falsified or omitted material information on an application for training or certification to the commission;
- 3) The peace officer has been **convicted** at any time of a felony offense under the laws of this state or has been convicted of a federal or out-of-state offense comparable to a felony under the laws of this state; except that if a certified peace officer was convicted of a felony before being employed as a peace officer, and the circumstances of the prior felony conviction were fully disclosed to his or her employer before being hired, the commission may revoke certification only with the agreement of the employing law enforcement agency;
- 4) The peace officer has been **discharged for disqualifying misconduct**, the discharge is **final**, and some or all of the acts or omissions forming the basis for the discharge proceedings occurred on or after the effective date of this section;
- 5) The peace officer's certificate was previously issued by administrative error on the part of the commission; or
- 6) The peace officer has interfered with an investigation or action for denial or revocation of certificate by: a) knowingly making a materially false statement to the commission; or b) in any matter under investigation by or otherwise before the commission, tampering with evidence or tampering with or intimidating any witness.

The act provides definitions, including definitions of the bolded terms in the material above. The term, "discharged for disqualifying misconduct" includes those who "**resigned in anticipation of discipline**" under circumstances specified in the definition.

CIVIL FORFEITURE UNDER RCW 69.50.505 AND RCW 9A.83.030

CHAPTER 168 (ESHB 168)

Effective Date: July 22, 2001

Amends RCW 69.50.505 of the Uniform Controlled Substances Act to provide that in a civil forfeiture proceeding: 1) the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that property is subject to forfeiture; and 2) a successful claimant to property is entitled to an award of reasonably attorney fees.

Also amends RCW 9A.83.030 of the "money laundering" chapter to reference and incorporate the changes made in 69.50.505.

TRANSIENT SEX OFFENDER REGISTRATION; WASPC ELECTRONIC JAIL BOOKING SYSTEM

CHAPTER 169 (HB 1952)

Effective Date: July 22, 2001

Amends RCW 9A.44.130's provisions relating to transient sex offenders. Such offenders must: 1) within 48 hours of ceasing to have a fixed residence, provide written notice to the sheriff of the county where they last registered; 2) report weekly, on a day specified by the office of sheriff, in person to the office of sheriff of the county where registered; 3) provide, in such weekly reports, at the sheriff's discretion, a list of locations where the person stayed during the last seven days.

Also amends the public notice provision of RCW 9A.44.130 and 4.24.550 to provide that the lack of a fixed residence may justify notice to the general public under appropriate circumstances.

In another section, this act changes from December 31, 2001 to July 1, 2002 the effective date of last year's legislation directing the Washington Association of Sheriffs and Police Chiefs to develop an electronic state-wide city and county jail booking and reporting system. See May 2000 LED at page 2 for summary of this 2000 Legislation regarding the system.

SEX OFFENDER REGISTRATION -- DURATION OF REQUIREMENT

CHAPTER 170 (HB 2086)

Effective Date: July 22, 2001

To comply with federal standards for the duration of the requirement of registration for certain sex offenders (the "lifetime" registration requirement), amends RCW 9A.44.140 to significantly limit the circumstances under which an individual may be relieved by a court of the "lifetime" duty to register as a sex offender.

PERJURY STATUTES REENACTED

CHAPTER 171 (HB 1692)

Effective Date: May 7, 2001

Re-enacts without change the versions of RCW 9A.72.010 (definitions) and RCW 9A.72.030 (perjury in the second degree), which were invalidated last year in State v. Thomas, 103 Wn. App. 800 (Div. II, 2000) Feb 2001 LED:17.

SEALING JUVENILE MISDEMEANOR CONVICTION RECORDS

CHAPTER 174 (SHB 1212)

Effective Date: July 22, 2001

Amends RCW 13.50.050 to provide for waiting periods to seal records of misdemeanors and gross misdemeanors of juvenile offenders.

JUVENILE DIVERSIONS -- SEALING RECORDS

CHAPTER 175 (SHB 1471)
2001

Effective Date: July 22,

Amends RCW 13.50.050 to provide waiting periods for sealing juvenile records of diversion and for destruction of such records.

ELECTROLOGY AND TATTOOING -- MISDEMEANOR FOR NOT MEETING DOH RULES

CHAPTER 194 (SHB 1042)

Effective Date: July 22, 2001

Adds a new section to chapter 70.54 RCW, making it a misdemeanor to not comply with sterilization rules adopted by the Department of Health in practicing electrology or tattooing.

"UNLICENSED PRACTICE OF A PROFESSION OR BUSINESS" STATUTE REENACTED

CHAPTER 207 (HB 1694)

Effective Date: May 7, 2001

Reenacts without change the version of RCW 18.130.190 (unlicensed practice of a profession or business), which was invalidated last year under State v. Thomas, 103 Wn. App. 800 (Div. II, 2000) Feb 2001 LED:17.

IDENTITY THEFT

CHAPTER 217 (ESSB 5449)

Effective Date: July 22, 2001

Makes several amendments to RCW 9.35.020, which include:

- **Expanding RCW 9.35.020 to prohibit knowingly obtaining, possessing, using or transferring a means of identification or financial information of another person, living or dead, with the intent to commit, or to aid or abet, any crime.**
- Making a violation where loss is in excess of \$1,500 “**identity theft in the first degree**,” a Class B felony; and making a violation where loss is less than \$1,500 (including where there is no monetary loss) “**identity theft in the second degree**,” a Class C felony.
- Establishing jurisdiction in either the county where the victim resides or in the county where any part of the offense takes place.
- **Providing that RCW 9.35.020 does not apply to a person who obtains another person’s driver’s license or other form of identification for the sole purpose of misrepresenting his or her age.**
- Providing that upon conviction, the sentencing court may issue an order that the victim may use in correcting public records damaged by identity theft.

Makes identity theft a crime under the Criminal Profiteering Act, RCW 9A.82.

Adds a new section to RCW 9.35 that requires businesses to provide victims information about fraudulent transactions made in their names.

Amends RCW 43.43.760 by authorizing law enforcement agencies to accept requests for fingerprinting from identity theft victims. Also requires the Washington State Patrol identification section to accept and file fingerprints of identity theft victims, and to provide the victim with a statement showing that the fingerprints have been accepted and filed. The statement provided shall state clearly in twelve-point print:

The person holding this statement has claimed to be a victim of identity theft. Pursuant to chapter 9.35 RCW, a business is required by law to provide this victim with copies of all relevant application and transaction information related to the transaction being alleged as a potential or actual identity theft. A business must provide this information once the victim makes a request in writing, shows this statement, and any government issued photo identification card, and a copy of a police report.

Amends RCW 19.16.250 to prohibit collection agencies from calling identity theft victims multiple times once they have been notified that a series of checks have been stolen or misappropriated.

“CRIMINAL PROFITEERING” REENACTMENT

CHAPTER 222 (HB 1578)

Effective Date: May 9, 2001

Reenacts without change the versions of the sections in the RCW chapter on “criminal profiteering, 9A.82, which were invalidated last year in State v. Thomas, 103 Wn. App. 800 (Div. II, 2000) Feb 2001 LED:17.

MISSING PERSONS -- RECORDS RETENTION

CHAPTER 223 (HB 1611)

Effective Date: July 22, 2001

Amends RCW 68.50.320 to provide that the dental ID system of the WSP ID and criminal history section shall retain records on persons previously reported as missing even if those persons are subsequently reported as found.

“COMMERCIAL BRIBERY” REENACTMENT

CHAPTER 224 (HB 1614)

Effective Date: May 9, 2001

Reenacts without change the version RCW 9A.68.060 (“commercial bribery”) which was invalidated last year in State v. Thomas, 103 Wn. App. 800 (Div. II, 2000) Feb 2001 LED:17. Also repeals RCW 49.44.070 addressing (“employee grafting”).

LICENSING SOCIAL WORKERS AND CERTAIN TYPES OF COUNSELORS AND THERAPISTS

CHAPTER 251 (ESSB 5877)

Effective Date: July 22, 2001

In this bill relating to licensing of “advanced social workers,” “independent clinical social workers,” “mental health counselors,” and “marriage and family therapists,” the Legislature amends RCW 9A.44.010(14) to include these classes of providers as “health care providers.”

FISH AND WILDLIFE STATUTES -- TECHNICAL CORRECTIONS

CHAPTER 253 (SSB 5961)

Effective Date: July 22, 2001

Technical changes are made in a number of provisions of Title 77 RCW to clean up errors and redundancies which occurred in prior legislation merging Fish and Wildlife statutes in Title 77.

ANTI-HARASSMENT ORDERS TO PROTECT CHILDREN FROM OTHER CHILDREN

CHAPTER 260 (SSHB 1041)

Effective Date: July 22, 2001

Amends several sections in chapter 10.14 (civil anti-harassment) and one section in chapter 7.21 (contempt). A new subsection (7) in RCW 10.14.040 provides:

(7) The parent or guardian of a child under the age of eighteen may petition in superior court for an order of protection to restrain a person under the age of eighteen years from contact with that child only in cases where the person to be restrained has been adjudicated of an offense against the child protected by the order, or is under investigation or has been investigated for such an offense. In issuing a protection order under this subsection, the court shall consider, among the other facts of the case, the severity of the alleged offense, any continuing physical danger or emotional distress to the alleged victim, and the expense, difficulty, and educational disruption that would be caused by a transfer of the alleged offender to another school. The court may order that person restrained in the order not attend the public or approved private elementary, middle, or high school attended by the person under the age of eighteen years protected by the order. In the event that the court orders a transfer of the restrained person to another school, the parents or legal guardians of the person restrained in the order are responsible for transportation and other costs associated with the change of school by the person restrained in the order. The court shall send notice of the restriction on attending the same school as the person protected by the order to the public or approved private school the person restrained by the order will attend and to the school the person protected by the order attends.

Enforcement of violations of anti-harassment orders by those under age 18 is by contempt proceedings as provided in the act.

ESCAPE, BAIL-JUMPING AND EXTRADITION

CHAPTER 264 (HB 1227)

Effective Date: July 1, 2001

Amends RCW 9A.76.110 ("escape in the first degree") by adding a "knowingly" element and by adding an affirmative defense for "uncontrollable circumstances" as defined under the act.

Amends RCW 9A.76.120 ("escape in the second degree") by – 1) adding a "knowingly" element; 2) adding a leaving-the-state-or-remaining-absent-from-the-state variation of the crime for those committed as criminally insane for a sex offense, violent offense or felony harassment offense under chapter 10.77 RCW; and 3) by adding an affirmative defense of "uncontrollable circumstances" as defined under the act.

The crime of "escape in the second degree" no longer includes one found to be a sexually violent predator who is under an order of conditional release and leaves the state without prior authorization. But see the summary of chapter 287 below.

Amends RCW 9A.76.170 ("bail jumping") by adding a "knowingly" element; adding language regarding failing to report or surrender for service of sentence; and adding a defense of "uncontrollable circumstances" as defined under the act.

A new section is added to chapter 9A.88 RCW that will allow the state of Washington to send a person in custody back to their state of origin without the state governors becoming involved. A pre-signed waiver of extradition will eliminate the current lengthy expedition process. The person in custody will be protected from mistaken identity because a photograph or fingerprints is required to positively identify the person.

The act repeals RCW 72.65.070 ("willfully failing to return from work release") and RCW 72.66.060 ("willfully failing to return from furlough"). These crimes have been merged under this act into the crimes of escape in the first and second degrees.

SEX OFFENDER REGISTRATION – PUBLIC NOTICE BY NEWSPAPER AND BY INTERNET

CHAPTER 283 (ESSB 6143)

Effective Date: July 22, 2001

Amends RCW 4.24.550 by inserting a new subsection (4) providing as follows:

(4) The county sheriff with whom an offender classified as risk level III is registered shall cause to be published by legal notice, advertising, or news release a sex offender community notification that conforms to the guidelines established under RCW 4.24.5501 in at least one legal newspaper with general circulation in the area of the sex offender's registered address or location. The county sheriff shall also cause to be published consistent with this subsection a current list of level III registered sex offenders, twice yearly. This list shall be maintained by the county sheriff on a publicity accessible web site and shall be updated at least once per month.

Amends RCW 65.16.020 to provide that, in order to qualify as a legal newspaper, the newspaper must have a policy of printing all statutorily required legal notices, including notice under this act.

SEXUALLY VIOLENT PREDATORS -- PROCEDURES AND STANDARDS FOR COMMITMENT

CHAPTER 286 (ESSB 5122)

Effective Date: May 14, 2001

Amends numerous sections in chapter 71.09.RCW to clarify that the fact-finder, in making the threshold determination of status as a sexually violent predator, is not to consider whether there are less restrictive alternatives to confinement.

SEXUALLY VIOLENT PREDATORS – SEPARATE “ESCAPE” PROHIBITION

CHAPTER 287 (SSB 5123)

Effective Date: May 14, 2001

Adds a new section to chapter 9A.76 separately addressing escape by sexually violent predators as follows:

- 1) A person is guilty of escape by a sexually violent predator if, having been committed to the department of social and health services as a sexually violent predator under chapter 71.09 RCW, he or she:
 - a) Escapes from custody;
 - b) Escapes from a commitment facility;
 - c) Escapes from a less restrictive alternative facility; or
 - d) While on conditional release and residing in a location other than at a commitment center or less restrictive alternative facility, leaves or remains absent from the state of Washington without prior court authorization.
- 2) Escape by a sexually violent predator is a class B felony.

Unlike the other “escape” crimes and the bail-jumping crime modified under chapter 264 (see above), this new “escape” crime does not include the newly codified defense of “uncontrollable circumstances” for those other crimes.

Also amends RCW 9A.76.120 to delete language that previously made escape by a sexually violent predator “second degree escape” under some circumstances.

INCREASED FINES FOR TRAFFIC INFRACTIONS AND CRIMES

CHAPTER 289 (SSB 5309)

Effective Date: July 22, 2001

Amends RCW 46.63.110 to impose an additional \$10 penalty for traffic infractions. Adds a new section to chapter 46.64 RCW to add a \$50 penalty for traffic crimes. These fines will go into the Public Safety and Education Account under RCW 43.08.250, which is expanded to allow legislative appropriations from the PSEA for “drug court operations.”

MOTOR VEHICLES -- NOISE PREVENTION

CHAPTER 293 (SSB 5494)

Effective Date: July 22, 2001

Amending RCW 46.37.390(3) regarding mufflers to read as follows:

No person shall modify the exhaust system of a motor vehicle in a manner which will amplify or increase the noise emitted by the engine of such vehicle above that emitted by the muffler originally installed on the vehicle, and it shall be unlawful for any person to operate a motor vehicle not equipped as required by this subsection, or which has been amplified as prohibited by this subsection so that the vehicle’s exhaust noise exceeds ninety-five decibels as measured by the Society of Automotive Engineers (SAE) test procedure J1169 (May, 1998). It is not a

violation of this subsection unless proven by pro per authorities that the exhaust system modification results in noise amplification in excess of ninety-five decibels under the prescribed SAE test standard. A court may dismiss an infraction notice for a violation of this subsection if there is reasonable grounds to believe that the vehicle was not operated in violation of this subsection.

This subsection (3) does not apply to vehicles twenty-five or more years old or to passenger vehicles being operated off the highways in an organized racing or competitive event conducted by a recognized sanctioning body.

VEHICULAR ASSAULT -- REVISING THE ELEMENTS

CHAPTER 300 (ESB 5790)

Effective Date: July 22, 2001

Amends RCW 46.61.522 by striking language and adding language as follows:

(1) A person is guilty of vehicular assault if he or she operates or drives any vehicle:

(a) In a reckless manner ~~((;))~~ and ~~((this conduct is the proximate cause of serious))~~ causes substantial bodily ~~((injury))~~ harm to another; or

(b) While under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, and ~~((this conduct is the proximate cause of serious))~~ causes substantial bodily ~~((injury))~~ harm to another; or

(c) With disregard for the safety of others and causes substantial bodily harm to another.

(2) ~~(("Serious bodily injury" means bodily injury which involves a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body.~~

~~(3))~~ Vehicular assault is a class B felony punishable under chapter 9A.20 RCW.

(3) As used in this section, "substantial bodily harm" has the same meaning as in RCW 9A.04.110.

The revised causation language makes the vehicular assault statute consistent with the vehicular homicide statute, such that the less demanding operator-cause standard explained in State v. Rivas, 126 Wn.2d 443 (1995) August 95 LED:12, now clearly applies under both statutes.

REENACTING CRIMES OF OBSTRUCTING, MAKING FALSE STATEMENTS

CHAPTER 308 (HB 1564)

Effective Date: May 14, 2001

Reenacts without change the 1995 versions of RCW 9A.76.175 (false or misleading statements to public servant) and 9A.76.020 (obstructing). These reenactments were made necessary by the ruling in State v. Thomas, 103 Wn. App. 800 (Div. II, 2000) Feb 2001 LED:17.

ABSTRACTS OF DRIVING RECORDS -- INTENTIONAL MISUSE AS FELONY

CHAPTER 309 (HB 1567)

Effective Date: July 22, 2001

Amends RCW 46.52.130 to establish two classifications for criminal misuse of abstracts of driving records. Negligent violation is a gross misdemeanor, while intentional violation is a class C felony.

REENACTING CRIME OF UNLAWFUL PRACTICE OF LAW

CHAPTER 310 (HB 1579)

Effective Date: May 14, 2001

Reenacts without change RCW 2.48.180 and 9.12.010 addressing unlawful practice of law. These reenactments were made necessary by the ruling in State v. Thomas, 103 Wn. App. 800 (Div. II, 2000) Feb 2001 LED:17.

SERVICE OF ANTI-HARASSMENT PROTECTION ORDERS

CHAPTER 311 (EHB 1591)

Effective Date: July 22, 2001

Amends RCW 10.14.080 of the civil antiharassment law to require certain information in an ex parte order and notice of hearing for a temporary order of protection.

Amends RCW 10.14.100 to provide that, if the court finds that the respondent was personally served with the temporary order, and if the terms of the temporary order have not been changed, a temporary protection order issued ex parte becomes permanent even if the respondent fails to appear for the court hearing on the permanent order.

THEFT OF MOTOR VEHICLE FUEL

CHAPTER 325 (HB 1895)

Effective Date: July 22, 2001

Adds a new section to chapter 46.61 RCW creating a new crime of "theft of motor vehicle fuel":

(1) Any person who refuses to pay or evades payment for motor vehicle fuel that is pumped into a motor vehicle is guilty of theft of motor vehicle fuel. A violation of this subsection is a gross misdemeanor punishable under chapter 9A.20 RCW.

(2) The court shall order the department to suspend the person's license, permit, or nonresident privilege to drive for a period specified by the court of up to six months.

There is no value element to this crime.

CHILD DEPENDENCY PROCEEDINGS -- INCREASING ACCOUNTABILITY

Chapter 332 (ESSB 5413)

Effective Date: July 22, 2001

Among other changes in law intended to increase accountability of child dependency proceedings, this act amends RCW 13.34.065 to provide that, when a child is returned home from shelter care a second time, "a law enforcement officer must be present and file a report to [DSHS]."

2000 ACT GOES INTO EFFECT: INTERMEDIATE DRIVER LICENSE FOR DRIVERS UNDER AGE

18

The "Intermediate Driver License" bill adopted last year as chapter 115, Laws of 2000, goes into effect July 1, 2001. An explanation of the eligibility standards and the restrictions under the license are set forth on a special DOL webpage at [<http://www.wa.gov/dol/drivers/intermed.htm>].

RCW 46.20.075, effective July 1, 2001 provides:

(1) An intermediate license authorizes the holder to drive a motor vehicle under the conditions specified in this section. An applicant for an intermediate license must be at least sixteen years of age and:

(a) Have possessed a valid instruction permit for a period of not less than six months;

(b) Have passed a driver licensing examination administered by the department;

(c) Have passed a course of driver's education in accordance with the standards established in RCW 46.20.100;

(d) Present certification by his or her parent, guardian, or employer to the department stating (i) that the applicant has had at least fifty hours of driving experience, ten of which were at night, during which the driver was supervised by a person at least twenty-one years of age who has had a valid driver's license for at least three years, and (ii) that the applicant has not been issued a notice of traffic infraction or cited for a traffic violation that is pending at the time of the application for the intermediate license;

(e) Not have been convicted of or found to have committed a traffic violation within the last six months before the application for the intermediate license; and

(f) Not have been adjudicated for an offense involving the use of alcohol or drugs during the period the applicant held an instruction permit.

(2) For the first six months after the issuance of an intermediate license or until the holder reaches eighteen years of age, whichever occurs first, the holder of the license may not operate a motor vehicle that is carrying any passengers under the age of twenty who are not members of the holder's immediate family as defined in RCW 42.17.020. For the remaining period of the intermediate license, the holder may not operate a motor vehicle that is carrying more than three passengers who are under the age of twenty who are not members of the holder's immediate family.

(3) The holder of an intermediate license may not operate a motor vehicle between the hours of 1 a.m. and 5 a.m. except when the holder is accompanied by a parent, guardian, or a licensed driver who is at least twenty-five years of age.

(4) It is a traffic infraction for the holder of an intermediate license to operate a motor vehicle in violation of the restrictions imposed under this section.

(5) Enforcement of this section by law enforcement officers may be accomplished only as a secondary action when a driver of a motor vehicle has been detained for a suspected violation of this title or an equivalent local ordinance or some other offense.

(6) An intermediate licensee may drive at any hour without restrictions on the number of passengers in the vehicle if necessary for agricultural purposes.

(7) An intermediate licensee may drive at any hour without restrictions on the number of passengers in the vehicle if, for the twelve-month period following the issuance of the intermediate license, he or she:

(a) Has not been involved in an automobile accident; and

(b) Has not been convicted or found to have committed a traffic offense described in chapter 46.61 RCW or violated restrictions placed on an intermediate licensee under this section. *[Bolding added by LED Eds. to emphasize that enforcement is only as secondary action.]*

RCW 46.20.267, effective July 1, 2001, provides:

If a person issued an intermediate license is convicted of or found to have committed a traffic offense described in chapter 46.61 RCW or violated restrictions placed on an intermediate license under RCW 46.20.075:

(1) On the first such conviction or finding the department shall mail the parent or guardian of the person a letter warning the person of the provisions of this section;

(2) On the second such conviction or finding, the department shall suspend the person's intermediate driver's license for a period of six months or until the person reaches eighteen years of age, whichever occurs first, and mail the parent or guardian of the person a notification of the suspension;

(3) On the third such conviction or finding, the department shall suspend the person's intermediate driver's license until the person reaches eighteen years of age, and mail the parent or guardian of the person a notification of the suspension.

For the purposes of this section, a single ticket for one or more traffic offenses constitutes a single traffic offense.

RCW 46.20.105 is amended to provide that DOL will issue distinctive "instruction permit(s)" and "intermediate license(s)."

UNITED STATES SUPREME COURT

FOURTH AMENDMENT PERMITS CUSTODIAL ARREST FOR ALL MISDEMEANORS, EVEN IF PUNISHABLE ONLY BY A FINE; WASHINGTON LAW PROBABLY MORE RESTRICTIVE

Atwater v. City of Lago Vista, 121 S.Ct. 1536 (2001)

Facts: (Excerpted from Supreme Court majority opinion; some citations omitted)

In Texas, if a car is equipped with safety belts, a front-seat passenger must wear one, and the driver must secure any small child riding in front. Violation of either provision is "a misdemeanor punishable by a fine not less than \$25 or more than \$50." Texas law expressly authorizes "[a]ny peace officer [to] arrest without warrant a person found committing a violation" of these seatbelt laws, although it permits police to issue citations in lieu of arrest.

In March 1997, Petitioner Gail Atwater was driving her pickup truck in Lago Vista, Texas, with her 3-year-old son and 5-year-old daughter in the front seat. None of them was wearing a seatbelt. Respondent Bart Turek, a Lago Vista police officer at the time, observed the seatbelt violations and pulled Atwater over. According to Atwater's complaint (the allegations of which we assume to be true for present purposes), Turek approached the truck and "yell[ed]" something to the effect of "[w]e've met before" and "[y]ou're going to jail." He then called for backup and asked to see Atwater's driver's license and insurance documentation, which state law required her to carry. When Atwater told Turek that she did not have the

papers because her purse had been stolen the day before, Turek said that he had "heard that story two-hundred times." [*Court's footnote: Turek had previously stopped Atwater for what he had thought was a seatbelt violation, but had realized that Atwater's son, although seated on the vehicle's armrest, was in fact belted in. Atwater acknowledged that her son's seating position was unsafe, and Turek issued a verbal warning.*]

Atwater asked to take her "frightened, upset, and crying" children to a friend's house nearby, but Turek told her, "[y]ou're not going anywhere." As it turned out, Atwater's friend learned what was going on and soon arrived to take charge of the children. Turek then handcuffed Atwater, placed her in his squad car, and drove her to the local police station, where booking officers had her remove her shoes, jewelry, and eyeglasses, and empty her pockets. Officers took Atwater's "mug shot" and placed her, alone, in a jail cell for about one hour, after which she was taken before a magistrate and released on \$310 bond.

Atwater was charged with driving without her seatbelt fastened, failing to secure her children in seatbelts, driving without a license, and failing to provide proof of insurance. She ultimately pleaded no contest to the misdemeanor seatbelt offenses and paid a \$50 fine; the other charges were dismissed.

Proceedings in civil suit: Claiming a Fourth Amendment violation, Mr. And Mrs. Atwater filed a federal civil rights action against Officer Turek, the city, and the police chief. Ultimately, the Court of Appeals for the Fifth Circuit affirmed U.S. District Court dismissal of the action. The Atwaters then obtained review in the U.S. Supreme Court.

ISSUE AND RULING: Does the Fourth Amendment authorize law enforcement officers generally to make custodial arrests for misdemeanor crimes: 1) that are punishable only by fine (i.e., are non-jailable), and 2) that do not involve a breach of the peace? (ANSWER: Yes)

Result: Affirmance by 5-4 ruling of lower federal courts' orders dismissing the Atwaters' civil rights suit.

ANALYSIS BY MAJORITY: Writing for a 5-member majority, Justice Souter concludes, after a detailed analysis, that the Fourth Amendment authorizes law enforcement officers generally to make custodial arrests for misdemeanor crimes even where those crimes: 1) are punishable only by fine (i.e., are non-jailable), and 2) do not involve a breach of the peace.

Along the way, Justice Souter rejects the two alternative theories by plaintiffs to support a categorical limitation on custodial arrest for misdemeanors. First, after a lengthy historical analysis, the majority opinion rejects plaintiffs' argument that the common law historically limited arrest for misdemeanors to those involving breaches of the peace.

Second, the majority opinion rejects the Atwaters' argument that the Court should, as a matter of newly-declared policy under the Fourth Amendment, limit misdemeanor custodial arrests to only those misdemeanors for which jail time is a possible punishment, except where the government can show a compelling need for immediate detention.

The majority opinion concedes that Mr. And Mrs. Atwater might well prevail under a rule derived exclusively to address the uncontested facts of her case, since her claim to live free of pointless indignity and confinement clearly outweighs anything the City of Lago Vista can raise against it specific to her minor violation. However, the Court has traditionally recognized that a responsible Fourth Amendment balance is not well served by standards requiring sensitive, case-by-case determinations of government need, lest every discretionary judgment by officers in the field be converted into an occasion for constitutional review.

Complications arise, the majority opinion in Atwater declares, when careful consideration is given to the possible applications of the several criteria the Atwaters propose for drawing a line between minor crimes with limited arrest authority and others crimes not so restricted. The Atwaters' assertion that these difficulties could be dealt with simply by requiring police in doubt not to arrest is impractical and unrealistic, the majority asserts. First, such a tie-breaker would in practice amount to a constitutionally inappropriate least-restrictive-alternative limitation, a "Monday-morning quarterbacking" approach the Court has previously rejected as unrealistic, considering the nature of police work. Second, whatever guidance the "when in doubt, don't arrest" tie-breaker might give police, the price would be a systematic incentive to not arrest in many situations where even the Atwaters concede arresting would serve an important societal interest.

The majority opinion goes on to explain that its ruling against the Atwaters' request for a Fourth Amendment restriction on warrantless misdemeanor arrests is supported by other considerations, including: 1) that the case law does not support the Atwaters' theories; 2) that anyone arrested without formal process is entitled to a judge's review of probable cause within 48 hours; 3) that many jurisdictions (**such as Washington –See LED Editorial Comment below**) have chosen to impose more restrictive safeguards through statutes limiting warrantless arrests for minor offenses; 4) that it is in the police interest to limit such arrests, which carry costs too great to incur without good reason; and 5) that, under current doctrine, the preference for categorical, "bright line" limits on Fourth Amendment claims does give way to individualized review when an arrestee makes a reasonable argument that an arrest, with or without a warrant, was made in an extremely unlawful manner which was unusually harmful to one's privacy or physical interests.

The sum total of all these considerations, combined with the good sense and the political accountability of most local lawmakers and peace officers, is an absence of a problem demanding a constitutional remedy. Thus, the Atwater majority concludes, probable cause justifies all custodial arrests under the Fourth Amendment, without the need to balance the interests and circumstances involved in particular situations. Hence, an officer may thus arrest an individual without violating the Fourth Amendment if there is PC to believe that the person has committed a criminal offense in the officer's presence, even if the crime is minor and not jailable, the majority opinion thus concludes.

A short final section of the majority opinion addresses and rejects another theory under which the Atwaters might have recovered, had the facts of the arrest process been different. An arrest made on PC, but in an "extraordinary manner, unusually harmful to the privacy or physical interests of the arrestee, may constitute a Fourth Amendment violation. But Mrs. Atwater's arrest, the majority opinion notes, was "a normal custodial arrest." The majority explains further in this regard:

She was handcuffed, placed in a squad car, and taken to the local police station, where officers asked her to remove her shoes, jewelry, and glasses, and to empty her pockets. They then took her photograph and placed her in a cell, alone, for about an hour, after which she was taken before a magistrate, and released on \$310 bond. The arrest and booking were inconvenient and embarrassing to Atwater, but not so extraordinary as to violate the Fourth Amendment.

LED EDITORIAL COMMENT: In State v. Hehman, 90 Wn.2d 45 (1978), the Washington Supreme Court held on “public policy” grounds unique to the Hehman case (non-constitutional grounds never relied on by the Court before or since on a search-and-seizure issue) that some traffic crimes are so minor that custodial arrest is not permitted for their violation unless arrest is necessary for a reason beyond the mere fact of the violation (the Hehman Court gave as two examples of such special need for custodial arrest of minor traffic violators: 1) the violator’s inability to ID himself or herself, and 2) PC to believe the violator would disregard a promise to appear on a citation).

A year later, in 1979, the Washington Legislature amended the traffic code to decriminalize many traffic offenses. Thirteen years after that, in State v. Reding, 119 Wn.2d 685 (1992) Dec. 92 LED:17, the Washington Supreme Court said that it was reading two provisions in the decriminalization package (RCW 46.64.015 and 10.31.100(3)) together, and that the Court saw those statutory provisions as the 1979 Legislature’s codification of the Hehman ruling. Hence, the Reding Court held that custodial arrest is permitted -- without the requirement for establishing a special need (see the Hehman “special needs” parenthetical above) – for the traffic crimes listed in RCW 10.31.100(3).

No Washington court decision has ever suggested that there is a limit on custodial arrests for non-traffic crimes. Nonetheless, we read Hehman and Reding together as a clear signal from the Washington Supreme Court that, under Washington law, custodial arrest is not permitted for any crimes, traffic or non-traffic, which expressly do not carry any jail time. We are not aware of any such non-jailable crimes under current Washington RCW’s. Some local jurisdictions may have such crimes by ordinance. For officers in those local jurisdictions, we believe that, even though custodial arrest on such crimes would not violate the Fourth Amendment under Atwater, custodial arrest would most likely violate Washington law (at least for Exclusionary Rule purposes) unless the violator was unable to reasonably identify himself or herself, or the violator gave the officer reasonable grounds to believe that the violator would disregard the citation.

In closing, we will briefly note two other indirect ways in which Washington law is more restrictive than the Fourth Amendment on the custodial arrest authority of officers. Both derive from “independent grounds” readings of our state constitution. First, unlike the Fourth Amendment as construed by the U.S. Supreme Court, article 1, section 7 of the Washington constitution, as construed by the Washington Supreme Court, prohibits “pretext seizure” (and presumably “pretext arrest”). See State v.

Ladson, 138 Wn.2d 343 (1999) Sept. 99 LED:05. Second, while the Fourth Amendment standard for informant-based probable cause has been relaxed by the U.S. Supreme Court to a “totality of the circumstances” standard, article 1, section 7 of our state constitution, as construed by the Washington Supreme Court, continues to employ the slightly more restrictive two-pronged test for informant-based PC. See State v. Smith, 102 Wn.2d 449 (1984) Nov. 84 LED:11.

NEXT MONTH

The August 2001 LED will include, among other entries: **1) Part Two of our 2001 Washington Legislative Update**; **2) the U.S. Supreme Court’s May 14, 2001 decision in U.S. v. Oakland Cannabis Buyers’ Cooperative, 121 S.Ct. 1711 (2001) (holding that, under the federal drug statutes, there is no “medical necessity” defense available to marijuana distributors who may have been operating in compliance with California’s state statutes recognizing a qualified “medical necessity” defense.); 3) an entry on the April 17, 2001 decision of Division Three of the Washington Court of Appeals in State v. Bessette, 21 P.3d 318 (Div. III, 2001) (where the Court of Appeals ruled that, when an officer chased an MIP offender in “hot pursuit” to a third party’s residence, the officer did not have constitutional authority to make a forcible, warrantless entry of the third party’s residence to arrest the fleeing offender); and 4) an entry on the May 8, 2001 decision of Division Three of the Court of Appeals in State v. Penfield, 2001 WL 477645 (where the Court of Appeals ruled that, while it is lawful to stop a vehicle based solely on a record showing the registered owner to have a suspended license, the stop must be terminated immediately once the officer discovers that the driver of the vehicle is not that registered owner).**

INTERNET ACCESS TO COURT DECISIONS, STATUTES, AND WAC RULES

The Washington office of the Administrator for the Courts maintains a web site with appellate court information, including recent court opinions by the Court of Appeals and State Supreme Court. The address is [<http://www.courts.wa.gov/>]. Decisions issued in the preceding 90 days may be accessed by entering search terms, and decisions issued in the preceding 14 days may be more simply accessed through a separate link clearly designated.

Many U.S. Supreme Court opinions can be accessed at [<http://supct.law.cornell.edu/supct/>]. This web site contains all U.S. Supreme Court opinions issued since 1990 and many significant opinions of the Court issued before 1990.

Easy access to relatively current Washington state agency administrative rules (including DOL rules in Title 308 WAC, WSP equipment rules at Title 204 WAC, and State Toxicologist rules at WAC 448-15), as well as all RCW's current through January 2001, is at [<http://slc.leg.wa.gov/>]. Information about bills filed in the 2001 Washington Legislature is at the same address -- look under “Washington State Legislature,” “bill info,” “house bill information/senate bill information,” and use bill numbers to access information. Access to the “Washington State Register” for the most recent WAC amendments is at [<http://slc.leg.wa.gov/wsr/register.htm>]. In addition, a wide range of additional state government information can be accessed at [<http://access.wa.gov>]. The address for the Criminal Justice Training Commission's webpage is [<http://www.wa.cjt>], while the address for the Attorney General's Office webpage is [<http://www.wa.ago>].

The Law Enforcement Digest is co-edited by Senior Counsel John Wasberg and Assistant Attorney General Shannon Inglis, both of the Washington Attorney General's Office. Questions and comments regarding the content of the LED should be directed to Mr. Wasberg at 206 464-6039; Fax 206 587-4290; E Mail [johnw1@atg.wa.gov]. Questions regarding the distribution list or delivery of the LED should be directed to Darlene Tangedahl of the Criminal Justice Training Commission (CJTC) at (206) 835-7337; Fax (206) 439-3752; e mail [dtangedahl@cjtc.state.wa.us]. LED editorial comments and analyses of statutes and court decisions express the thinking of the writers and do not necessarily reflect the views of the Office of the Attorney General or the CJTC. The LED is published as a research source only. The LED does not purport to furnish legal advice. LED's from January 1992 forward are available via a link on the Commission's Internet Home Page at: [<http://www.wa.gov/cjt>].